

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claim 3** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 states *continuing contact with the customer is initiated prior to the conducting of the home inspection*. This statement conflicts with both claims 1 and 2. Claim 1 places the step of providing a visual home inspection prior to the step of continuing contact with the customer. Claim 2 discloses that that limitations as written in claim 1 are consecutive. For the purposes of this examination the Examiner will interpret claim 3 to refer to a second home inspections. Furthermore, is Applicant stating in Claim 3 that they are disclosing one type of home inspection? Further clarification is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-14** are rejected under 35 U.S.C. 102(e) as being anticipated by **Turin et al. (US 6,853,958 B1)**(hereinafter "Turin").

5. **With respect to claim 1:** Turin discloses:

- a) identifying a customer who has already committed to paying for a home inspection by the service provider, which home inspection is limited to a visual inspection of a building of interest to the customer as to determine the physical condition of the building and functioning of its associated major appliances and equipment; (col.3, lines 42-61; Figs. 1 and 5 - home inspection prior to buying house; inspector examines the structure of the house and identifies any defects or problems; the inspector usually examines the interior and exterior of the house as well as any appliances)
- b) continuing contact with the customer to provide an expanded sales-point time frame for educating the customer in respect of available indoor air quality inspection and assessment services and benefits thereof provided by the service provider and the risks attendant in ignoring indoor air quality; (col. 8, lines 3-18 and 33-45 - information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

Furthermore, the data identifying the types of services provided is non-functional descriptive data.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Exemplary "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. See *Gulack*, 703 F.2d at 1384-85,217 USPQ at 403; *see also Diamond v. Diehr*, 450 U.S. 175, 191,209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the subset. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the subset, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the subset.

The Examiner asserts that the data identifying the types of services provided adds little, if anything, to the claimed acts or steps and thus do no serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The subjective interpretation of the data does not patentably distinguish the claimed invention.

- c) educating the customer in the expanded sales-point time frame in respect of available indoor air quality inspection and assessment services and benefits thereof provided by the service provider, the risks attendant in ignoring indoor air quality, and the cost-effectiveness of having a home inspection and indoor air quality inspection and assessment done contemporaneously; (col. 8, lines 3-18 and 33-45 - "customer can contact the services unit 214 of the system to discuss the information in the notice")
- d) providing the customer with the choice of having an indoor air quality inspection and assessment conducted by the service provider contemporaneously with the home inspection of the building of interest; (col. 5, lines 8-27; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house;

continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

- e) recording the customer's preference; (col. 8, lines 19-32 and 46-49 – frequency of information transmittal is based on customer preference) and,
- f) performing the home inspection and, if in accordance with the customer's preference, also performing, contemporaneously with the home inspection, an indoor air quality inspection and assessment of the building of interest, whereby the source provider may charge a nominal sum acceptable to many purchasers of homes that otherwise would have been too expensive for those purchasers to consider. (col. 5, lines 8-27; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other

allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

6. **With respect to claims 2 and 12:** Turin discloses wherein said steps are consecutive. (col.3, lines 42-61; col. 8, lines 3-18 and 33-45; Figs. 1 and 5 - home inspection prior to buying house; information regarding home and condition of appliances is transmitted to customer at a frequency they specify after purchase of home)

7. **With respect to claim 3:** Turin discloses wherein said step of continuing contact with the customer is initiated prior to the conducting of the home inspection. (col. 8, lines 3-18 and 33-45 - information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

8. **With respect to claim 4:** Turin discloses wherein said step of continuing contact with the customer is conducted contemporaneously with the conducting of the home inspection. (col. 8, lines 3-18 and 33-45 - information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

9. **With respect to claim 5:** Turin discloses:

- a) offering to a customer a first inspection service limited to visual inspection of tangible attributes of a building; (col.3, lines 42-61; Figs. 1 and 5 - home inspection prior to buying house; inspector examines the structure of the house and identifies any defects or problems; the inspector usually examines the interior and exterior of the house as well as any appliances);

- b) offering to the same customer a second inspection service including at least visual inspection for physical sources of non-tangible air-borne contaminants in the building; (col. 5, lines 8-27; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify)
- c) providing the first inspection service; (col.3, lines 42-61; Figs. 1 and 5 - home inspection prior to buying house; inspector examines the structure of the house and identifies any defects or problems; the inspector usually examines the interior and exterior of the house as well as any appliances) and
- d) providing the second inspection service contemporaneously in the building with the first inspection service. (col. 5, lines 8-27; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the

house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify).

10. **With respect to claims 6 and 9:** Turin discloses:

- a) inspecting landscaping/drainage for possible conditions which may cause moisture or infestation problems,
- b) inspecting for exterior wall penetrations/damage so as to identify causes of past/present water intrusion and possible hidden moulds,
- c) testing to detect high moisture levels behind finished walls conducive to mould growth,
- d) checking venting of furnace and hot water tank for indications of flue gas backflow into the house which may indicate an air imbalance in the home,
- e) reviewing on-site storage for hazardous products, including chemicals, phenols, asbestos and combustibles,
- f) checking for odour to identify organics, phenols, mould/mildew,
- g) checking of windows, basement and attic for mould/mildew including for fungus or other growths, and sampling materials for testing as required,
- h) checking for excess moisture including window condensation, faulty toilet seals, high moisture levels behind tub surrounds,
- i) checking carbon monoxide level,

- j) inspecting for asbestos,
- k) generally checking health issues of the customer so as to correlate the health issues to home IAQ factors.

(col. 5, lines 8-27; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

11. **With respect to claims 7 and 10:** Turin discloses:

- a) determining building type,
- b) determining site condition,
- c) determining weather conditions at time of conducting inspection,
- d) determining site development,
- e) inspecting the exterior of the building,
- f) inspecting the roof of the building,
- g) inspecting any attic of the building,
- h) inspecting any garage of the building,
- i) inspecting any mechanical/ventilation equipment of the building,
- j) inspecting any interior development of the building.

(col. 4, line 65 – col.5, line 39 – sensors for collecting house data are positioned inside and outside of the house)

12. **With respect to claims 8 and 11:** Turin discloses:

- a) said step of inspecting the roof of the building includes inspecting for active leaks, water staining or biological growth, (col. 5, lines 8-39; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify; water leaks and cracks are monitored)
- b) said step of inspecting any garage of the building includes:
 - (i) inspecting for odours and for causes of odours including organic or chemical causes and for visible rot or decay/mould,
 - (ii) inspecting for storage of gasoline, paints, garbage or organics, (col. 5, lines 8-39; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the

environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify; water leaks and cracks are monitored)

- c) said step of inspecting any mechanical heating and ventilating equipment of the building includes inspecting any humidifier for biological fungal build-up,

(col. 5, lines 8-39; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify; water leaks and cracks are monitored)

- d) said step of inspecting any interior development includes:
 - (i) inspecting for the presence of cleaning products including of a perfumed or hazardous type,
 - (ii) inspecting for active water leaks, stains or biological fungal build-up,
 - (iii) inspecting windows for water damage or biological fungal build-up.

(col. 5, lines 8-39; col. 8, lines 3-18 and 33-45; col. 12., lines 31-37; Fig. 4 - when a "homeowner becomes a customer ...[they] can select between a single home inspection or the continuous monitoring of the house; continuous monitoring includes environmental data which relates to the environmental condition of the house and includes "indoor air quality, which is a function of the amount of radon, carbon monoxide, mold, pollutants, and other allergens in the indoor air"; information regarding home and condition of appliances is transmitted to customer at a frequency they specify; water leaks and cracks are monitored)

13. **With respect to claim 13:** Turin discloses wherein said step of offering to the same customer a second inspection service is prior to said step of providing the first inspection service. (col. 8, lines 3-18 and 33-45 - information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

14. **With respect to claim 14:** Turin discloses wherein said step of offering to the same customer a second inspection service is contemporaneously with the step of providing the first inspection service. (col. 8, lines 3-18 and 33-45 - information regarding home and condition of appliances is transmitted to customer at a frequency they specify)

CONCLUSION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Name: /H. R./
Examiner, Art Unit 3629

Title: Examiner

Signature:

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